Supreme Court, U.S.
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No._____

In The

Supreme Court of the United States

Robbin Jackson,

Petitioner,

v.

Houston County Board of Education,

Respondent

On Petition For a Writ Of Certiorari To The United States Court Of Appeals For the Eleventh Circuit

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PETITION FOR A WRIT OF CERTIORARI

Mr. Robbin Jackson
1102 Lovely Lane
Perry, Georgia 31069
(912) 987-5152

October Term 1998

3188

QUESTION PRESENTED

Whether the district court and court of appeals violated my constitutional "Bill of Rights",seventh amendment to a jury trial in my civil case by issusing a summary judgment when all the facts were not in, and the facts that were presented from the defendant were based on mistrues (lies).

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PETITION FOR A WRIT OF CERTIORARI

Robbin Jackson respectfully petitions for a writ of certiorari to review the judgment of the United Court of Appeals for the Eleventh Circuit

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Opinions Below

The Court of Appeals is not published.

The District court is unreported.

Jurisdiction

Judgment issued from District Court on September 3, 1997

US. Court of Appeals for the Eleventh Circuit issued judgment on Jan. 11, 1999
Denied Rehearing on Feb. 22, 1999

Statement

It seems like a conspiracy here in the 'good ole boys' State of Georgia between the United States District Court of Middle Georgia in Macon, and The United States Court of Appeals in Atlanta.

It seems like civil rights laws are a thing of the past in the 'good ole South.'

There is evident to show that the United States District Court was in error by granting summary judgment to the Appellee. First of all, the Appellant has finish his master's degree in guidance and counseling, and have talked to the new Superintendent, Mr. Charles A. Holloway about a job in the Houston County school system. Mr. Tony Hinnant, the former superintendent, cited "the reason for the Appellant dismissal was for 'lack of work'," which was a lie.

As of today, May 22, 1999, the Appellee has not offered the Appellant any job; eventhough, they continuously advertise that they are in need of workers.

The filing of two motions by the Board to get the district court to issue a summary judgment should have told the Court of Appeals in Atlanta that all information had not been submitted to issue any summary judgment.

The affidavit attesting that Jackson would not be qualified for a middle- school teaching position unless he obtained a provisional accelerated teaching certificate that was submitted by the Appellee, also was a lie. Now that the Appellant has a master's degree for grades k-12, it is clear to see and understand that the Appellee had no intention of hiring the Appellant for a full time teaching position.

The Appellant asked the district court on three occasions, and also asked the court of appeal to have the Appellee to turn over important documents that I need to win this case. As of today, I have not receive any of the documents that I requested.

The district court was in error by not forcing the Board to turn over those documents.

The interview scores that the Appellant received from the Appellee's committees were bias as explained to the lower courts.

The district court summary judgment was an error for not allowing the Board to fully comply with the Appellant request for those documents.

It is the Appellant hopes that the Supreme court would overrule both lower courts and grant awards to the Appellant.

The documents requested by the Appellant were discoverable, relevant, and necessary to overcome summary judgment by the district court.

In another case involving another black person in the Houston County school system, the Board tried to destroy this person's reputation by saying that she was incompentent, had questionable teaching skills, poor command of the English language and an explosive temper. Those allegations were proven wrong by the Georgia State Board of Education.

This goes to show that the Houston County Board would use anything to get rid of teachers that they do not like; suchas, the Appellant.

The Board hired the new Superintendent's wife to the Feagin Mill Middle where they fired the teacher from whom they said was incompetent.

The reason why the Appellee do not want to produce the documents the Appellant is requesting because it would show the Appellee is not truthful in their pay to blacks and whites; especially, the high school coaches.

It is my prayers that the Supreme Court do not fall in the same trap the district court and the court of appeals fell into by believing that the Appellee relies on strong interview scores and

resumes from other applicants in their decision to hire. It is a "good ole boy" system inwhich they hire. If you don't go with the Board's wrong, then you won't get hired.

These are genuine issues that a jury should hear and not rest upon a judge suchas Judge Duross Fitzpatrick, who has made other premature summary judgments while serving on the district court.

An abuse of discretion would have been shown if the Board substantially complied with the Appellant's discovery requests, and the documents the Appellee did not produce would have enabled the Appellant to demonstrate a genuine issue of material facts.

The Appellant has establish his claim of discrimination from the facts already presented. However, there are more witnesses that the Appellant wants to present. The district court, and now the appeals court, want to take away the Appellant's constitutional "Bill of Rights", which states in the seventh amendment: "Right to jury trial in civil cases." The Appellant wants a jury to decide the facts in this case.

The Board uses the same old lies; suchas, the Appellant's poor English skills, low interview scores, and classroom-management problems as the reason for not hiring the Appellant. As the court can see, they used those same old lies to deny Ms. Elizabeth McCrary (the lady mentioned earlier) her job.

There are plenty genuine issues in this case, and please do not be a part of the Board's crimes and allow them to continue discriminating against minorities; especially, black males.

This is a case where the Appellee is retaliating against the Appellant for filing the law suit against them.

The Board's reason of non-discriminatory reasons for not hiring the Appellant is not true. The constrained budget deficit was true, but only because of the mismanagement of funds by the Board. If the Appellant had not filed this suit, he would have still been employed with the Houston County school system.

You can always need new schools; however, the Board has misused tax payers money by opening and closing schools.

The Appellant showed that there were openings in the Houston County School system in his field. The Board also hires people out of their field. However, the Board had no intention of hiring the Appellant as a full time teacher in the twenty plus years he was working as a substitute.

Just because the Houston County Board of Education hired a black man at the Perry Middle School for the science teaching position, after the lawsuit was filed, does not mean the system does not discriminate against black males; suchas, the Appellant.

Only after the lawsuit was filed, that the Board and Perry Middle School, where I was employed, questioned my classroom management. I was receiving good reports for my job performance.

After years of going to school to become a full-time teacher and work in the school system of Houston County and being a taxpayer, it is a bad feeling to be discriminated against by the Houston County Board of Education.

Instead of looking for black male role models for the school system, the Board is doing everything to keep the black man out of the system. So please rule against the lower courts.

This 22th day of May, 1999

Robbin Jackson,
Pro se

1102 Lovely Lane
Perry, Georgia 31069
(912) 987-5152

Sworn before me this 21 day of May, 1999.

Notary Public, Houston County, Georgia
My Commission Expires April 28 2002

(Do Not Publish)

IN THE UNITED STATES
COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

No. 97-9104
Non-Argument Calendar

D.C. Docket No.
5:96-CV-162-1(DF)

Robbin Jackson,
Plaintiff-Appellant,

versus

Houston County Board of
Education, a school system in the
State of Georgia,
Defendant-Appellee.

Appeal from the United States
District Court for the Middle District
of Georgia

(January 11, 1999)
Before TJOFLAT and
EDMONDSON, Circuit Judges and
CLARK, Senior Circuit Judge.
PER CURIAM:

Appendix A

Plaintiff Robbin Jackson, pro se, appeals the grant of summary judgment for defendant Houston County Board of Education ("the Board") in his employment-discrimination action filed under 42 U.S.C. 2000e-2 and 42 U.S.C. 1981. Jackson, a black man, alleged that, due to race and sex discrimination, the Board discharged him as a substitute teacher and did not hire him as a full-time teacher. Jackson had been a full-time substitute teacher at Perry Middle School for three years, and had intermittently substituted in the Houston County school system for 20 years. He asserted that the Board gives whites and women preferential pay, job responsibilities, and promotions. He sought back pay, punitive damages, and equitable relief. The Board answered, denying the allegations of discrimination.

After a period of discovery, the Board moved for summary judgment. It submitted Jackson's deposition and several affidavits. Jackson filed two unsworn reponses. The district court found that Jackson failed to create a genuine issue of material fact regarding the following claims: (1) the Board pays white and female teachers more than black and male teachers; (2) he was terminated as a permanent substitute teacher because of his sex and/or race; (3) he was not hired to fill a special-education teaching position because of his race and/or sex; and (4) he was not hired for a computer-keyboarding position because of his sex and/or race. The court therefore granted the Board partial summary judgment.

The Board filed a second motion for summary judgment. It submitted an affidavit establishing that when Jackson applied for a computer teaching position, he had the lowest score. Finally, Jackson was interviewed for a science teaching position, but the Board hired a black man with the highest interview score and the strongest science background. The Board also submitted an affidavit attesting that Jackson would not be qualified for a middle-school teaching position unless he obtained a provisional accelerated teaching certificate.

Jackson filed an unsworn response. In addition, Jackson filed a third request for production of documents and moved to hold the Board in contempt for not complying with his discovery requests. Earlier, the district court issued a scheduling order requiring the completion of discovery by a specific deadline. The Board answered Jackson's initial request for production of documents within this time frame, but it objected to some of Jackson's requests as being overbroad and burdensome. The district court never ruled upon the objections. Jackson's third request for production of documents, filed eight months after the discovery deadline passed, reiterated his original request. The district court did not acknowledge the request or construe it as a motion to compel discovery. The court denied Jackson's motion for contempt without stating its reasons.

The district court also granted summary judgment for the Board on Jackson's remaining claims. The court found it undisputed that Jackson's interview scores for the positions of computer, journalism, and science teacher were considerably lower than those of other applicants, and Jackson offered nothing to show that the Board's reasons for not hiring him were a pretext for discrimination.

On appeal, Jackson argues that (1) the district court erred by granting summary judgment to the Board while his discovery requests were still outstanding; (2) genuine issues of material fact precluded summary judgment because (a) the Board told him that no openings in his field of business education existed, but hired a business education teacher without first offering him the job; (b) he did not necessarily need to obtain a provisional accelerated teaching certificate to teach middle school; (c) one interviewer wrote "hire" in reference to another applicant before completing all interviews; (d) his low interview scores were a result of "biased thinking" from the interviewers.

This court reviews whether the district court prematurely granted summary judgment for abuse of discretion.[1] Our review of a district court's grant of summary judgment is plenary, viewing all facts in light most favorable to the non-movant.[2]

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[1] See Dean v. Barber, 951 F.2d 1210, 1213 (11th Cir. 1992).

[2] Harris v. Shelby County Board of Education, 99 F.3d 1078, 1082 (11th Cir. 1996).

We have reviewed Jackson's complaint, the Board's motions for summary judgment, Jackson's responses, the district court's orders, and other relevant portions of the record. Having considered those, along with the briefs of the parties, we find no reversible error.

Completion of discovery before summary judgment

Jackson argues that the district court erred by granting summary judgment to the Board "without allowing the Plaintiff to receive all the documents needed to win the case." He complains that the Board never fully complied with his requests for documents, and that the district court never ordered the Board to so comply. The Board does not respond to this argument.

"Generally, summary judgment is inappropriate when the party opposing the motion has been unable to obtain responses to his discovery requests."[3] Under Fed.R.Civ.P.56(f), the non-moving party may request a continuance of the motion for summary judgment "to permit affidavits to be obtained or depositions to be taken or discovery to be had." A pro se litigant need not invoke Rule 56(f) literally, so long as he notifies the district court that discovery is outstanding and seeks a delay of summary judgment ruling until the defendants comply with his discovery requests, as Jackson did here.[4] This court reviews whether the district court prematurely

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[3] Snook v. Trust Co. of Georgia Bank of Savannah, 859 F.2d 865, 870 (11th Cir. 1988).

[4] See Dean, 951 F.2d at 1214 n.3.

granted summary judgment for abuse of discretion.[5]

Here, the Board did not respond to four of Jackson's requests for production of documents:

> 1. Any and all payroll records and any other documents which reflect the pay history of your employees, their assignment or work area history, their race, sex, and proficiency history, in your Georgia school system for the years 1975 to present. ("History" in this context means actual pay and any information concerning any changes made, such as salary increases or decreases and the dates these events occurred with respect to each employee.)
>
> 2. Each employment discrimination complaint, no matter where said complaint was made (i.e. internally to you, externally to the EEOC or U.S. Depart. of Labor) filed regarding each and every department operated by you, since 1975.
>
> 3. Each and every employment discrimination charge made against you to the EEOC or filed in a State or Federal court, regarding each and every department or school operated by you, since 1975.

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[5] See id. at 1213.

> 4. All personnel files of all employees working in the job categories Plaintiff worked in and of those who were promoted to teaching positions over plaintiff.[6]

This case is analogous to cases in which the district court grants summary judgment without ruling upon the plaintiff's outstanding motion to compel discovery.[7] By ignoring the non-moving party's complaints of inadequate discovery, a district court may improperly deprive the litigant of his right to use discovery to obtain facts necessary to oppose summary judgment.[8] This court will reverse the grant of summary judgment if the plaintiff's outstanding request sought evidence that was discoverable, relevant and necessary to overcome summary judgment.[9] However, where the outstanding discovery could not create material factual disputes, summary judgment will stand despite the district court's

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[6] R1-7 at 15 Request No. 1; 16 Request No.2; 16-17 Request No. 3; and 18 Request No. 9.

[7] See, e.g., Dean, 951 F.2d at 1213-1214; Fernandez v. Bankers National. Life Insurance Co., 906 F. 2d 559, 570-571 (11th Cir. 1990); Snook, 859 F.2d at 871.

[8] See Fernandez, 906 F. 2d at 571 Snook, 859 F.2d at 871.

[9] See Fernandez, 906 F.2d at 570-71; Snook, 859 F.2d at 871.

failure to rule upon the plaintiff's discovery requests.[10]

Jackson's request for the race, sex, and payroll records of each Board employee from 1975 to the present seems to have been designed to support his claim that the Board pays white and female employees more than those who are black and male. It is not clear that this sweeping request was discoverable, however, as it appears to be "unreasonably cumulative or duplicative, or...obtainable from some other source that is more convenient, less burdensome, or less expensive." The Board did provide Jackson with demographic breakdowns of its employees by race and sex, and copies of the applicable, pre-set state teacher pay schedules and county supplements. In light of the discovery that Jackson recieved indicating the race, sex, and pay levels of Board employees, it does not appear that the district court "circumvented the policy underlying discovery" by failing to compel the Board to comply with this request.[11]

Regarding Jackson's request for documentation of previous employment-discrimination charges, although the Board did not produce any files, it did give Jackson the

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[10] See National Union Fire Insurance Co. of Pittsburgh v. Sahlen, 999 F.2d 1532, 1537 (11th Cir. 1993).

[11] Compare with Snook, 859 F. 2d at 871 (outstanding discovery requests left record inadequate for grant of summary judgment).

names and case numbers of two previous employment-discrimination actions filed in the Middle District of Georgia. Because Jackson could have explored the cases if he so desired, he does not appear to have been deprived of "the opportunity to discover information relevant to the summary judgment motion" on this request.[12]

Finally, Jackson's request for personnel files of employees who were promoted to teaching positions over him appears to have been designed to support his claim that he was not hired as a full-time teacher due to discrimination. The relevance and discoverability of such documents is manifest because the Board relied on strong interview scores and resumes from other applicants--and the comparative weakness of Jackson's scores--to support its motion for summary judgment. Indeed, when Jackson sought to have the Board held in contempt, one of his chief complaints was that although the Board produced these documents in support of summary judgment, it should have produced them much earlier in compliance with his discovery request. Nonetheless, as discussed below, even if the Board had produced the documents earlier, Jackson would not have been able to glean a genuine issue of material fact from them, as they overwhelmingly justified the Board's decision not to hire him.

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[12] Compare with Dean, 951 F.2d at 1214 (defendant's incomplete answers to discovery requests deprived plaintiff of opportunity to discover relevant evidence).

Because the Board substantially complied with Jackson's discovery requests, and documents a genuine issue of material fact, Jackson is unable to show an abuse of discretion.[13]

Propriety of summary judgment

Jackson argues that several genuine issues of material fact precluded summary judgment: (1) the Board told him that no openings in his field of business education existed, but hired a business education teacher without first offering him the job; (2) he did not necessarily need to obtain a provisional accelerated teaching certificate to teach middle school; (3) one interviewer wrote "hire" in reference to another applicant before completing all interviews; and (4) his low interview scores were a result of biased thinking" from the interviewers. The Board responds that Jackson failed to establish his claim of discrimination, and that it had legitimate, non-discriminatory reasons for terminating him as a substitute and not hiring him as a full-time teacher. The Board specifically contends that Jackson's poor English skills, low interview scores, and classroom-management problems prevented his success in a competitive hiring process.

Summary judgment is appropriate when there are no genuine issues of material fact and the

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[13] See Florida Power & Light v. Allis Chalmers Corp, 893 F.2d 1313, 1316 (11th Cir. 1990) (upholding district court's decision not to allow additional time for deiscovery before summary judgment because period for discovery had expired and defendants already had provided relevant discovery materials).

moving party is entitled to judgment as a matter of law.[14] Althouth pro se pleadings are entitled to liberal interpretation, a pro se litigant must meet the essential burden of establishing a genuine issue of material fact by submitting sworn materials.[15]

Under both Title VII and 42 U.S.C. 1981, circumstantial evidence of employment discrimation is analyzed under the burden-shifting test of McDonnell Douglas Corp v. Green.[16] The Plaintiff must (1) establish a prima facie case of discrimination; (2) the burden then shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection;" and (3) the plaintiff must then have an opportunity to prove the reasons offered by the defendant were a pretext for discrimination.[17] A *prima facie* case of discrimination, coupled with evidence sufficient

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14 See Fed.R.Civ.P. 56(c).

15 See Brown v. Crawford, 906 f.2d 667, 670 (11th Cir. 1990), cert. denied, 500 U.S. 933, 111 S.Ct. 2056, 114 L.ED. 2d 461 (1991); Gordon v.Watson, 622 F.2d 120, 123 (5th Cir. 1980).

16 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). See McWilliams v. Escambia County School Board., 658 F.2d 326, 331(5th Cir. Unit B 1981).

17 See Mcdonnell Douglas Corp., 411 U.S. at 802-04, 93 S.Ct. at 1824-25.

to permit a reasonable fact finder to disbelieve an employer's proffered reasons for the challenged action, precludes summary judgment for the defendant.[18]

The district court appears to have implicitly assumed that Jackson established a prima facie case of discrimination. Moreover, the Board does not argue against it, focusing instead on its legitimate, non-discriminatory reasons for not hiring him and his inability to demonstrate pretext. Accordingly, this court may assume that Jackson met the first part of the McDonnell Douglas test.[19]

As for the second prong, it was undisputed that the Board eliminated Jackson's job as a substitute due to a $3,224,054 budget deficit. An employer's constrained budget can serve as a legitimate, non-discriminatory reason for its employment decisions.[20] It was also undisputed that Jackson achieved weak interview scores compared to other applicants for the teaching positions. An employer's belief that another

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[18] See Combs v. Plantation Patterns, 106 F.3d 1519, 1534 (11th Cir. 1997), cert. denied, __U.S.__, 118 S. lCt. 685, 139 L. Ed. 2d 632 (1998).

[19] See, e.g. Mayfield v. Patterson Pump Co., 101 F.3d 1371, 1375 (11th Cir. 1996).

[20] See Miranda v. B & B Cash Grocery Store, Inc., 975 F. 2d 1518, 1529 (11th Cir. 1992) (budgetary restrictions appeared to be legitimate reason for plaintiff's low wage, subject to a showing of pretext).

applicant is "the best person for the job" may constitute a legitimate, non-discriminatory justification for its decision not to hire the plaintiff.[21]

Third, regarding pretext, Jackson offered nothing to allow a jury to find "that a discriminatory reason more likely motivated the employer or . . . that the employer's proffered emplanation is unworthy of credence."[22] Although he claims that the Board's hiring committees are biased, he never submitted any sworn materials to substantiate this allegation. Conclusory, unsworn allegations of discrimination are insufficient to create a genuine issue of material fact, particularly in light of the employer's evidence of legitimate, non-discriminatory reasons.[23]

Finally, despite Jackson's insistence that several genuine issues remained for trial, nothing he points to was sufficient to preclude summary judgment. His claim that the Board told him there were no openings in his field of business education, but it hired a business education teacher without first offering him the job does not suffice because the position was filled while Jackson still worked as a permanent substitute.

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[21] See Olafson v. Dade County School Board, 651 F. 2d 393, 395-96 (5th Cir. Unit B 1981).

[22] Hairson v. gainesville Sun Pub. Co., 9 F.3d 913, 920 (11th Cir. 1993), reh'g denied, 16 F.3d 1233 (1994).

[23] See Grigsby v. Reynolds Metals Co., 821 F.2d 590, 597 (11th Cir. 1987) (conclusory allegations of discrimination); Gordon v. Watson, 622 F.2d 120, 123 (5th Cir. 1980) (unsworn materials).

Thus, the Board's statement of no openings in Jackson's field after his substitute position was eliminated remains undisputed.

Jackson also failed to rebut the Board's evidence that he would need a provisional accelerated teaching certificate to teach middle school. Although he claimed the provisional certificate was unnecessary because he has 71 hours toward his master's degree, he adduced nothing to demonstrate that progress toward a master's degree alleviates teaching-certification requirements. Finally, that one interviewer wrote "hire" in reference to another applicant before conducting Jackson's interview for the science teaching position, did not create a genuine issue of race or sex discrimination. The comment only represented one interviewer's impressions, and, although the applicant was ultimately hired, he was, like Jackson, a black man.[24]

We conclude that the district court did not abuse its discretion by granting summary judgment while Jackson still had outstanding discovery requests. We further conclude that there was no genuine issue of material fact, and the district court did not err by granting the Board Summary judgment.

AFFIRMED. "s/Jenifer Alexander"
Deputy Clerk-Atlanta,GA

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[24] Howard v. Roadway Exp., Inc., 726 F.2d 1529, 1534-35 (11th Cir. 1984) (fact that employer hired a black applicant may rule out inference of discrimination against black plantiff).

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA-MACON DIVISION

Robbin Jackson,
Plaintiff,

v. C.A. No. 5:96-CV-162-1(DF)

Houston County Board of Education,
Defendant.

Civil Order File
Volume 69, Page 6879

JUDGMENT

The Court by Order dated September 2, 1997 and filed September 3, 1997, having granted Defendant's Motion for Summary Judgment,

Judgment is hereby entered in favor of Defendant Houston County Board of Education and against Plaintiff Robbin Jackson.

This 3rd day of September, 1997.

Gregory J. Lenard, Clerk
"s/Shari Walsh," U.S. Deputy Clerk

Appendix B

App. 16

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

Robbin Jackson,
Plaintiff,

vs. 5:96-CV-162-1(DF)

Houston Board of Education
Defendant

Civil Order File
Volume 69
Page 6879

Order

The above styled case is a civil rights action brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. and 42 U.S.C. 1981. Plaintiff claims that Defendant has on numerous occasions discriminated against him on the basis of his race, which is black, and his sex, which is male. On June 25, 1997, the Court entered an order that granted Defendant's motion for summary judgment for the claims of Plaintiff alleging that (1) the county pays its white and female teachers more than it does its black and male teachers; (2) Plaintiff was terminated from his position as a permanent substitute teacher because of his race and/or sex; (3) he was not hired to fill a special education teacher vacancy at Perry Middle School because of his race and/or sex; and (4) he was not hired to fill a computer keyboarding position at Bonair Middle School because of his race and/or sex. However, the Court ruled that Defendant had not met its initial burden of establishing that no genuine issue of material fact exists regarding Plaintiff's claims that he was illegally discriminated against

when he was not offered the following positions: exploratory computer position, speech journalism exploratory teacher, and science teacher. Defendant has filed a second motion for summary judgment, and additional material in support of the motion, which is now ripe for consideration by this Court.

Standard for Summary Judgment

Summary Judgment requires the movant to establish the absence of genuine issues of material fact, such that the movant is entitled to judgment as a matter of law. Fed.R.Civ.Proc. 56(c); Lordman Enterprises, Inc. v. Equicor, Inc., 32 F. 3d 1529, 1532 (11th Cir. 1994). After the movant meets this burden, "the non-moving party must make a sufficient showing to establish the existence of each essential element to that party's case, and on which that party will bear the burden of proof at trial." Howard v. B.P. Oil Co., Inc. 32 F.3d 520, 524(11th Cir. 1994) citing Celotex Corp. v. Catrett, 477 U.S.317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The non-moving party to a summary judgment need make this showing only after the moving party has satisfied its burden. Clark v. Coats & Clark, Inc. 929 F. 2d 604, 608 (11th Cir.1991).

The Court should consider the pleadings, depositions, and affidavits in the case before reaching its decision, Fed.R.Civ.Proc.56(c), and all reasonable inferences will be made in favor of the non-movant. Griesel v. Hamlin, 963 F.2d 338, 341 (11th Cir. 1992). Additionally, a "court need not permit a case to go to a jury...when the inferences that are drawn from the evidence, and upon which the non-movant relies, are 'implausible'." Mize v. Jefferson City

Bd. Of Educ., 93 F.3d 739, 743 (11th Cir. 1996). Furthermore, when the evidence is only circumstantial, summary judgment may be granted when a court "concludes that no reasonable jury may infer from the assumed facts the conclusions upon which the non-movant's claim rests." Id.

Facts

The Court will only outline the facts relevant to the motion now pending before the Court. Additional facts may be found in this Court's Order of June 25, 1997.

In May, 1994, Plaintiff interviewed for a computer exploratory teaching position. Three applicants were interviewed; two of the applicants were black and one was white. Robbin Jackson had the lowest interview score of the three applicants. A black female, Brenda Lee, was hired for the position.

In August, 1994, Robbin Jackson was interviewed for a journalism exploratory teaching position. There were six people interviewed for the position. The interview committee, which included a black woman, gave Robbin Jackson the lowest score of all applicants.

In November, 1996, Plaintiff interviewed for a science position. Mr. Cedric Rumph was hired to fill the science teaching position. Mr. Rumph is a black male who had the strongest science background and the highest interview score of all the applicants. Plaintiff, in contrast, has a degree in business education and a certificate qualifying him to teach business education at the high school level for computers, typing, and data processing. Of the eleven applicants for the science position, Plaintiff received the second lowest interview score.

During the hiring process for each of the three positions described above, Bobby Pennington, Principal of Perry Middle School, has stated that in addition to the interview scores, he considered Plaintiff's poor performance in his position as a permanent substitute teacher in Houston County.

Conclusions of Law

A Plaintiff may prove a claim of race or sex discrimination through circumstantial evidence through the burden-shifting analysis set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 207 (1981), and Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981).[1]
Under the McDonnell Douglas and Durdine framework:

> [A Plaintiff must] create an inference of discrimination by establishing a prima facie case. If he does so, the defendant must 'articulate some legitimate, non-discriminatory reason for [its action].' The Plaintiff may then attempt to show that these reasons are pretextual or may present other evidence to show that discriminatory intent was more likely the cause of the employer's actions.

Nix v. WLCY Radio/Rayhall Communications, 738 F.2d 1181, 1184 (11th Cir. 1894) (citations omitted).

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[1] **Because Title VII and Section 1981 employment discrimination claims are governed by the same evidentiary burden, the analysis of these two claims is combined.**

Plaintiff has failed to create an inference of discrimination with regard to the School Board's refusal to hire him for any of the three positions at issue here. One of the three positions was filled by a black woman, and another was filled by a black man. For each position, Defendant has demonstrated that Plaintiff had interview scores that were considerably lower than those of the person who was eventually hired into the position. Additionally, Defendant has presented evidence that Plaintiff's record as a substitute teacher was marred by incidents that reflect poorly on Plaintiff's ability; this affected the hiring decision. Thus, Defendant has shown that its decisions were not influenced by Plaintiff's race or sex, and Plaintiff has offered no evidence that suggests that the reasons proffered are pretext. Therefore, Defendant is entitled to summary judgment for each of the three claims addressed in its Second Motion for Summary Judgment.

Accordingly, Defendant's motion for summary judgment is hereby **Granted.**

SO ORDERED, this 2 day of September, 1997.

"s/Duross Fitzpatrick"
Duross Fitzpatrick, Judge
United States District Court

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 97-9104

Robbin Jackson,
Plaintiff-Appellant,
verus

Houston County Board Of Education,
a school system in the State of Georgia,
Defendant-Appellee

On Appeal from the United States District Court for the Middle District of Georgia

Before TJOFLAT and EDMONDSON, Circuit Judges and Clark, Senior Circuit Judge.

Per Curiam:

The Petition(s) for rehearing filed by appellant, Robbin Jackson, is denied.

Entered For the Court:

"s/Clark"
United States Circuit Judge

U. S. Court of Appeals
Eleventh Circuit
February 22, 1999
Thomas K. Kahn,
Clerk

Appendix c

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mr. Robbin Jackson,
Pro se
1102 Lovely Lane
Perry, Georgia 31069
(912) 987-5152

(2)

Supreme Court, U.S.
FILED
JUN 21 1999
CLERK

No. 98-1896

In the

Supreme Court of the United States

October Term, 1998

ROBBIN JACKSON,

Petitioner,

v

HOUSTON COUNTY BOARD OF EDUCATION,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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I

STATEMENT OF THE CASE

This race discrimination action was filed by Petitioner, Robbin Jackson (hereinafter "Jackson"), in the United States District Court for the Middle District of Georgia, on April 26, 1996 with a timely answer being filed by the Respondent, Houston County Board of Education (hereinafter the "Board"), on May 10, 1996. A scheduling and discovery order was entered by the court on June 24, 1996. Discovery was to be complete on November 12, 1996. Jackson filed a motion for preliminary injunction on September 30, 1996. After response by the Board of Education, the court entered an order on November 13, 1996 denying Jackson's motion. Reconsideration of the motion was denied by the court by order filed December 12, 1996. The Board filed a Motion for Summary Judgment on December 10, 1996 along with its memorandum and supporting affidavits. After the Jackson's response, the court entered an order on April 16, 1997 partially granting Summary Judgment, and another order was issued denying the Board's Motion for Summary Judgment on June 26, 1997.

On July 3, 1997 the Board submitted a second Motion for Summary Judgment along with memorandum and statement of undisputed material facts and supporting affidavits. After response by Jackson to the Board's second Motion for Summary Judgment and filing by Jackson of a Motion for Reconsideration of the court's order granting the Board partial summary judgment, the trial court entered an order on August 6, 1997 denying Jackson's Motion for Reconsideration of the Court's Order granting Partial Summary Judgment in favor of the Board and also denying Jackson's previously filed Motion for Contempt of Court. On September 3, 1997, the trial court granted the Board's second Motion for

Summary Judgment and entered judgment in favor of the Board dismissing in total Jackson's race discrimination action.

The decision of the trial court granting summary judgment for the Board was affirmed by the United States Court of Appeals for the Eleventh Circuit on January 11, 1999. Rehearing was denied on February 22, 1999.

STATEMENT OF FACTS

The Houston County School System is a political subdivision of the State of Georgia whose Board is vested with full management and control of the school system under the laws and the Constitution of the State of Georgia. The school system is monitored by the EEOC for its racial makeup through biannual reporting. Record Vol. II- 33. All employees of the school system are compensated on the state merit system pay scale. *Id.* Employees are given increases in pay for years of experience credited and advanced degrees obtained. *Id.* The school system has no discretion as to the state base pay scale. O.C.G.A. §20-2-212. The Houston County School System does pay a local supplement to many of its employees and said supplement is position specific and consistent across all positions in the system for equal positions. Record Vol. II-33.

The State of Georgia certifies individuals who apply for professional teaching positions. *Id.* Jackson had at the time of this action only a business education certificate on the high school level, grades seven through twelve, focusing on computers, typing and data processing. *Id.* For Jackson to become a full time teacher in the middle school, he would

have to obtain a provisional accelerated teaching certificate. *Id.*

Jackson is a forty-three year old black male who graduated from high school in 1971 and from Fort Valley State College in 1975 with a business education degree. Record Vol. I-10 at 11. Subsequently, Jackson worked for the Kellwood Company for 19 ½ years. *Id.* at 14. During Jackson's employment tenure with Kellwood Company, he intermittently was employed by the Board as a substitute teacher. *Id.* at 13-14. Jackson was terminated from his employment with the Kellwood Company on June 5, 1991. *Id.* at 14. He subsequently became employed by the Board as a permanent substitute teacher at Perry Middle School on February 16, 1994. Record Vol. 2-34. Permanent substitutes are not necessarily state certified employees and are not issued a contract of employment. Record Vol. 2-33.

On April 2, 1996, the Board was presented with a preliminary budget summary which showed there would be a budget deficit of approximately $3,224,054.00 due to the addition of two new middle schools and associated staff and unprecedented gain in student population. Record Vol. I-13. It was the decision of the Board to make up the deficit through a combination of personnel cuts, other budget cuts, and an increase in the ad valorem tax levy. *Id.* The position of permanent substitute teacher was eliminated school system-wide as it was not a state funded position nor was it mandated by the State of Georgia. *Id.* Jackson was discharged from his employment as a result of this reduction in force. *Id.* Of the twenty-seven (27) permanent substitutes displaced by the elimination of the permanent substitute position, twenty-five (25) were white and two (2) were black. Record Vol. I-13.

Jackson was interviewed for teaching positions at Perry Middle School during the 1994-95 school year. Record Vol. II-34. In each case Jackson was interviewed by a team of school staff in a competitive environment by a panel made up of instructional coordinators and teachers in the subject area. *Id.* Jackson interviewed for an exploratory computer position in May of 1994. Record Vol. I-10 at 24; Record Vol. II-16; *and* Record Vol II-34. Three people were interviewed. Two of the applicants were black and one was white. *Id.* The committee conducting the interviews had a black female on the committee, Mrs. Lumpkin. Record Vol. I- 10 at 5. Jackson scored the lowest of all of the applicants. Record Vol. II-34. A black female, Brenda Lee, was hired. *Id.*

In August of 1994, Jackson interviewed for a speech journalism exploratory teacher position. Record Vol. I-10 at 25-26 *and* Record Vol. II-34. There were six persons interviewed. The committee also included one black female, Mrs. McGhee. Record Vol. II-34. Again, Jackson scored the lowest of all applicants. *Id.*

Jackson was also interviewed for a science position at Perry Middle School. *Id.* The position was vacated when the teacher holding that position, Mrs. Little, was tragically killed in an automobile accident. *Id.* Jackson was afforded an interview to fill Mrs. Little's position. Jackson was not hired. The individual hired had a strong science background and scored the highest in the interviews. *Id.* The individual hired, Mr. Cedric Rumph, was a black male. *Id.*

Jackson has had prior problems conducting himself appropriately while employed as a permanent substitute at Perry Middle School. *Id.* Jackson had directives written to

him with regards to the improper denial of bathroom privileges to students. *Id.* He had difficulty with the Perry Middle School administration in that he was confrontational when told he was not to attend meetings for contractual full time staff, and he had a physical altercation with a student. *Id.*

SUMMARY OF ARGUMENT

Jackson's petition for writ of certiorari does not present compelling reasons for granting certiorari as required by Rule 10 of the Rules of the Supreme Court of the United States, and his petition only asserts erroneous factual arguments and the misapplication of a properly stated rule of law which does not warrant the granting of his petition.

The lower courts did not err in granting the employer's first and second motions for summary judgment notwithstanding the fact that the Board objected to and did not respond to four of Jackson's requests for production of documents.

Jackson's petition should be denied because he failed to carry his initial burden of establishing a prima facie case of discrimination.

The lower courts did not err in granting the employer's first and second motions for summary judgment because Jackson failed to establish a factual showing of discrimination in regard to his claims of disparate impact, disparate treatment, and claims under U.S.C. §1981.

This Court should deny Jackson's petition because Jackson's brief to this Court is void of any citation of authority or citation to the record of the District Court.

ARGUMENT

I. JACKSON'S PETITION FOR WRIT OF CERTIORARI DOES NOT PRESENT COMPELLING REASONS FOR GRANTING CERTIORARI AS REQUIRED BY RULE 10 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES, AND HIS PETITION ONLY ASSERTS ERRONEOUS FACTUAL FINDINGS AND THE MISAPPLICATION OF A PROPERLY STATED RULE OF LAW WHICH ALSO DOES NOT WARRANT THE GRANTING OF HIS PETITION

The first assertion of error that Jackson makes in his brief to this Court is that the District Court erred in not forcing the Board to "turn over important documents that I [Jackson] need to win this case." Petitioner's Brief at 3. The Board timely objected to the production of the documents that Jackson requested. (Defendant's Answers to First Request to Produce Documents were omitted from the District Court Index). No motion to compel the production of the documents was ever filed by Jackson. Only after the discovery deadline of November 12, 1996, as set forth in the Scheduling/Discovery Order of June 24, 1996, did Jackson file a Motion for Contempt of Court by the Defendant. Record Vol. II-38. That motion was subsequently denied by the District Court. Record Vol. 2 at 38 and 42.

In the unpublished opinion of the Eleventh Circuit Court of Appeals, the adequacy of the Board's compliance

with Jackson's request for the production of documents was discussed. The first request objected to by the Board was for the race, sex, and payroll records of each Board employee from 1975 to the present. The Court of Appeals found this request to be "unreasonably cumulative or duplicative, or . . . obtainable form some other source that is more convenient, less burdensome, or less expensive." *Jackson v. Houston County Bd. of Educ.*, No. 97-9104, slip op. at 8 (11th Cir. Jan. 11, 1999). The Court of Appeals further found that the District Court did not circumvent the policy underlying discovery by failing to compel the Board to comply with Jackson's request. *Id.* at 8.

As to the partial compliance with the request for documentation of previous employment discrimination charges, the Court of Appeals opined that Jackson was not deprived of "the opportunity to discover information relevant to the summary judgment motion" on this request. *Id.* at 9. Also, as to some of the documents that Jackson sought, only facts that would "overwhelmingly" justify the Board's decision not to hire him would be brought forth, thus making the objection to production even beneficial to Jackson's case. *Id.* at 10.

Jackson is merely objecting to the proper application of a properly stated rule of law by both the District Court and the Eleventh Circuit Court of appeals. This argument falls well below the required showing for granting certiorari according to Rule 10 of the Rules of the Supreme Court of the United States.

II. THE LOWER COURTS DID NOT ERR IN GRANTING THE EMPLOYER'S FIRST AND SECOND MOTIONS FOR SUMMARY JUDGMENT NOTWITHSTANDING THE FACT THAT THE BOARD OBJECTED TO AND DID NOT RESPOND TO FOUR OF JACKSON'S REQUESTS FOR PRODUCTION OF DOCUMENTS

A. The Board adequately responded or objected to Jackson's Request for the Production of Documents, and there were no material factual disputes in relation to the documents sought to be discovered.

The Board responded with valid responses or objections to Jackson's request to produce certain documents in that the documents requested were either (1) overly broad and burdensome, (2) provided for and not explored by Jackson, (3) did not present a genuine issue of material fact, or (4) overwhelmingly justified the Board's decision not to hire him. *Jackson v. Houston County Bd. Of Educ.*, No. 97-9104, slip op. at 8-10 (11th Cir. Jan. 11, 1999). "[W]here the outstanding discovery could not create factual disputes, summary judgment will stand despite the district court's failure to rule upon the plaintiff's discovery requests." *Id.* at 7-8; *see also Nat'l Union Fire Ins. Co. Of Pittsburgh v. Sahlen*, 999 F.2d 1532, 1537 (11th Cir. 1993). Because the Board adequately responded or objected to Jackson's request for the production of documents where possible and necessary and no material factual dispute existed in reference to the documents sought, petitioners writ should be denied.

B. The period for discovery had expired and the Board had already provided relevant discovery materials.

Jackson's first requests for the production of documents were timely responded to or objected to on June 24, 1996. On the same day, June 24, 1996, a Scheduling/Discover Order was issued by the District Court. It ordered that the discovery period end on November 12, 1996. Record Vol. I-6. (Plaintiff's First Request for Production of Documents was omitted from the District Court Index). Jackson then filed a second request for the production of documents on July 3, 1996, requesting the same documents that were requested in the first request for production of documents. Record Vol. I-8. This second request was not responded to because it had been adequately responded to on June 24, 1996. Jackson's third request for the production of documents was filed on July 11, 1997, well after the November 12, 1996 deadline set for by the Scheduling/Discovery Order of June 24, 1996. Record Vol. II-41 *and* Record Vol. I-6. The Court of Appeals for the Eleventh Circuit has upheld a district court's decision not to allow additional time for discovery before summary judgment because the period for discovery had expired and defendant had already provided relevant discovery materials. *Sec Florida Power & Light v. Allis Chalmers Corp.*, 893 F.2d 1313, 1316 (11th Cir. 1990). According to the Eleventh Circuit Court of Appeals, the Board substantially complied with Jackson's discovery requests; therefore, Petitioner's writ should be denied. *Jackson v. Houston County Bd. of Educ.*, No. 97-9104, slip op. at 10 (11th Cir. Jan. 11, 1999).

III. JACKSON'S PETITION SHOULD BE DENIED BECAUSE HE FAILED TO CARRY HIS INITIAL BURDEN OF ESTABLISHING A PRIMA FACIE CASE OF DISCRIMINATION

The standard of review that the Eleventh Circuit applies to similar cases has been outlined in the case of *Harris v. Shelby County Board of Education*, 99 F.3d 1078, 1083 (11th Cir. 1996):

> First, the plaintiff has the burden of establishing a prima facie case of discrimination. *McDonnell Douglas,* 411 U.S. at 802, 93 S.Ct. at 1824. Second, assuming that the plaintiff has met this initial burden, the defendant has the burden to produce a "legitimate, nondiscriminatory reason" for the allegedly discriminatory employment action. *Id.* Third, if the defendant satisfies this burden of production, the plaintiff has an opportunity to prove by a preponderance of the evidence that the reasons offered by the defendant are a mere pretext for discrimination, and to persuade the fact-finder that the defendant intentionally discriminated against the plaintiff. *Id.* at 804, 93 S.Ct. at 1824. "The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253, 101 S.Ct. 1089, 1093, 67 L.Ed.2d 207 (1981).

Harris, 99 F.3d at 1083. In this case, Jackson failed to even carry the initial burden of establishing a prima facie case of discrimination. Even if Jackson could meet this initial burden, the Board has produced adequate evidence of a "legitimate, nondiscriminatory reason" for its employment action. The evidence of legitimate, nondiscriminatory reasons includes the fact that Jackson was consistently evaluated by multiracial Board hiring committees who consistently scored him lower than all other black and white applicants. Record Vol. II-34 at Exhibit A, B and C. Also, Jackson's failure to present any substantiated proof of a mere pretext for discrimination would make it impossible for him to overcome the Board's "legitimate, nondiscriminatory reason" for its employment action.

Jackson has not carried his initial burden of establishing a prima facie case of discrimination, nor has he presented a compelling reason for this Court to grant his petition.

IV. THE LOWER COURTS DID NOT ERR IN GRANTING THE EMPLOYER'S FIRST AND SECOND MOTIONS FOR SUMMARY JUDGMENT BECAUSE JACKSON FAILED TO ESTABLISH A FACTUAL SHOWING OF DISCRIMINATION IN REGARD TO HIS CLAIMS OF DISPARATE IMPACT, DISPARATE TREATMENT, AND CLAIMS UNDER U.S.C. §1981

A. The *McDonnell Douglas* Test.

In order to establish a prima facie case of disparate treatment under Title VII, Jackson must have met the four part test set forth by the this Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), as well as the

requirements set forth in its progeny. The prima facie case set forth in *McDonnell Douglas* is as follows:

> (i) that he belongs to a racial minority;
> (ii) that he applied for and was qualified for a job for which the employer was seeking applicants; and,
> (iii) that, despite his qualifications, he was rejected; and,
> (iv) that after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.

Id. at 802.

In order for Jackson to have established a prima facie case of disparate impact, Jackson must have shown:

(1) that the Board employed a facially neutral employment practice that had a significant discriminatory impact; and

(2) it was the application of that specific employment practice that caused the adverse action. *MacPherson v. University of Mantevalla*, 922 F.2d 766 (11th Cir. 1991); *Hill v. Seaborne Coast Line Railroad Company*, 885 F.2d 884 (11th Cir. 1990).

The "significant discriminatory impact" may be established by statistical evidence indicating that a particular employment practice has had a disproportionate affect on a protected group. Jackson must have isolated and identified the specific employment practices that are allegedly

responsible for any observed statistical disparities. *Hill* 885 F.2d at 812.

With regards to Jackson's 42 U.S.C. 1981 claim, Jackson was required to prove that the Board intentionally discriminated against him to establish liability under the statute, and proof of a disparate impact alone is insufficient. *General Bldg. Contractors Assoc. v. Pennsylvania*, 458 U.S. 375 (1982). Jackson must have presented sufficient evidence to convince a reasonable jury to conclude that the Board's actions were motivated by racial considerations. *Smith v. Firestone Tire and Rubber Company*, 875 F.2d 1325 (7th Cir. 1989).

B. Jackson failed to meet the *McDonnell Douglas* Test.

It is the Board's contention that Jackson failed to set forth any facts showing discrimination with regards to claims of disparate impact, disparate treatment, and Section 1981.

Assuming the Court found Jackson made a prima facie case under *McDonnell Douglas*, supra., Jackson did not rebut the Board's legitimate non-discriminatory reasons for its employment action. When asked what evidence he had to support his complaint with regards to preferential treatment of females, Jackson was unable to articulate or demonstrate any objective basis for the allegation. Record Vol. I-10 at 32. When questioned concerning his complaint regarding the disparity of working conditions for white and black workers, Jackson again could not articulate or demonstrate any objective evidence to support his allegation. *Id.* at 33. In deposition, the only discriminatory working condition that he could point out was the following: "Going to buildings in which

there is much rain on the outside, when there is rain condition, and you really didn't have no other choice but to go into those conditions." *Id.* at 33-34. But certainly rain would effect all Board employees, regardless of race or gender.

When asked on deposition what system of discrimination Jackson contended to exist, Jackson could not articulate any pattern or practice of the Board which resulted in any discriminatory impact. *Id.* at 17. Further, Jackson has not identified any specific employment practice which caused an alleged disparity, nor pointed out any statistical disparities. Jackson's sole basis for his claim is that he is black and he was not hired for a full time teaching position. *Id.* at 18-20. When Jackson was asked what evidence he had that any individual employed by the Board failed to hire him on the basis of his race, his response was "well, that's the only thing which I see". *Id.* at 22.

In three interviews with Board schools for teaching positions that Jackson participated in, he was consistently evaluated by both black and white members of the interview committees. Record Vol. II-34 at Exhibit A, B and C. Jackson consistently scored lower than all other applicants. *Id.* Two of the three positions that Jackson interviewed for were filled by black educators, one male and one female, which is prima facie evidence that Jackson was not discriminated against on the basis of sex or race. Record Vol. I- 10 at 25-26 *and* Record Vol. II-34. While Jackson may be minimally qualified to be a teacher, interviews by educators, both black and white, in a competitive hiring process have consistently found Jackson without the level of teaching skills that equal or exceed those of other black or white applicants. It is the duty of all involved in the hiring process to recommend to the Board the best qualified applicant for available positions.

Jackson also had classroom management problems which are set forth in the above factual statement and detailed by the Affidavit of Bobby Pennington. Record Vol. II-34 at 2. Jackson has a history with the system that reflects negatively on his potential to be an effective classroom teacher who could develop and convey a curriculum to his students. These problems and the fact that Jackson consistently scored below all other applicants for the positions for which he interviewed, demonstrate legitimate, non-discriminatory and objective reasons for Jackson not being hired by the Board. *Evans v. McClain of Georgia*, 131 F.3d 957 (11th Cir. 1997).

V. THIS COURT SHOULD DENY JACKSON'S PETITION BECAUSE JACKSON'S BRIEF TO THIS COURT IS VOID OF ANY CITATION OF AUTHORITY OR CITATION TO THE RECORD OF THE DISTRICT COURT

Jackson has pointed this Court no authoritative support for his argument nor to anything in the record which would raise any genuine issue of material fact regarding intentional discrimination or any pretextual motive. Petitioner's Brief. Without citation of authority or citation to the record, inter alia, Jackson fails to present the required "compelling reasons" for granting of his petition as required by Rule 10 of the Rules of the Supreme Court of the United States.

Furthermore, Jackson has failed to show a split in the United States Court of Appeals on an issue in this case, that a state court of last resort has decided an important federal question in a way that conflicts with another state court or United States Court of Appeals, or that an important question of federal law has not been settled. Not making the above

listed showings is further indication, according to Rule 10 of the Rules of the Supreme Court of the United States, that Jackson's petition is not worthy of being granted.

Therefore, Jackson's Petition should be denied.

CONCLUSION

For the above and foregoing reasons, the petition of Robbin Jackson should be denied.

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HOUSTON COUNTY BOARD OF EDUCATION

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to the United States Court of Appeals
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REPLY PETITION FOR A WRIT OF CERTIORARI

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REPLY BRIEF FOR A WRIT OF CERTIORARI

STATEMENT OF THE CASE

Eventhough the Houston County Board of Education (hereinafter the "Board") did not sign their **BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI**, nor did the Board sign the certificate of service, the Counsel of Record for the Board, Mr. William R. Jerles, Jr., was finally truthful when he stated that the documents were "Signed under the Pains and Penalty of Perjury."

Robbin Jackson (hereinafter the "Plaintiff") asked the United States District Court for the Middle District of Georgia, Macon Division (hereinafter the "District Court") on three different occasion to order the Board to produce documents that the Plaintiff needed to win the case. As of today, those documents have not been received by the Plaintiff. The Plaintiff also asked the United States Court of Appeals for the Eleventh Circuit in Atlanta, Georgia (hereinafter the Court of Appeals) on one occasion to order the Board to produce those documents. The Court of Appeals also refused to order the Board to produce any documents.

The Plaintiff did discover some important information needed to win this case by reading the June 1999 edition of the **Georgia Informer.** There was an article entitled, **"White Women Dominate Houston County Schools,"** pages 33-36. The article stated: "Highest Paid--Salary figures obtained from the Houston County Public School's personnel office show that for some reason black men are not likely to go into the education field. Out of 1,367 employees, only 41 black men earned over $30,000 a year.

An astounding 898 white women earned as much. This number was followed by 245 white men and 183 black women. In order to turn our black children around, we need more men in education."

The Plaintiff agrees that we need more black men in education. However, the Board is not hiring that many black men. Out of 1,367 employees in the Houston County school system that earn $30,000 a year, only 41 black men earned over that amount. That is only about 2.9 percent.

If the Board would have provided the Plaintiff this information when requested, the District Court and the Court of Appeals would probably have ruled differently. The Plaintiff stated in the original complaint that "Houston County school system discriminates against black males by stratifying the system to put whites in top positions and to pay whites more money for doing the same or comparative jobs. Houston County school system discriminates on the basic of race and/or sex: in pay for the same or similar jobs; in promotions or advancement; in hiring; in conditions of employment; the most favored group in this system is White."

The Supreme Court can consider a petition for a wit of certiorari when a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. (Supreme Court Rule 10(c)).

The question before the Supreme Court of the United States is whether the District Court and Court of Appeals violated my (Plaintiff) constitutional "Bill of Rights", seventh amendment to a jury trial in my civil case by issusing a summary judgment when all the facts were not in, and the facts that were presented from the Defendant(The Board) were based on mistrues (lies).

Some of the mistrues by the Board are: (1) All employees of the school system are compensated on the state merit system pay scale. (Brief in Opposition to Petition For a Writ of Certiorari, page 2). In the Georgia Informer's article, *Id.*, The four high schools athletics directors, which are all white males, Conrad Nix at Northside High School earns $70,236. Perry High School athletics director, George Collins, earns $62,640. Warner Robins High School athletics director, Richard Fendley, earns $72,228, and Houston County High School athletics director, Doug Johnson, earns $64,644. Many teachers with higher degrees earns less than some of the athletics directors.

(2) The Board stated: "Jackson had at the time of this action only a business education certificate on the high school level, grades seven through twelve, focusing on computers, typing and data processing. *Id.* For Jackson to become a full time teacher in the middle school, he would have to obtain a provisional accelerated teaching certificate. *Id.*"
After the Plaintiff received his master's degree in guidance (school) counseling, which includes grades kindergarten through twelfth grade (k-12), the Board had no intentions of hiring the Plaintiff.

The Plaintiff did work at the Kellwood Company for 19 1/2 years because the Board would not hire the Plaintiff in a teaching position. As a way of trying to get into the system, while working at nights at Kellwood, the Plaintiff intermittently worked as a substitute teacher in the Houston County school system during the daytime.

After two white females quit the permanent substitute position at the Perry Middle School, the Board finally hired the Plaintiff into that position.

On April 2, 1996, the Board was presented with a preliminary budget summary which showed there would be a budget deficit of approximately $3,224,054. It was due to mismanagement of funds by the Board. The Board was opening and closing schools unnecessarily. The State of Georgia passed a law about the numbers of employees that the central office of all boards of education could employ, The Houston County Board surpass that number many times over. If the Board was really trying to cut the budget, they wouldn't be paying their Personnel/Human Resource Director, Ms. Roberta Barr, white female, $78,948 a year. The Superintendent, white male, Mr. Charles Holloway makes $121,959 a year, and his wife, which was just hired by the Board of Education less then two years ago, Mrs. Susan Holloway, makes $38,268 a year. By eliminating all 26 of the full-time permanent substitute positions, the Board saved only $111,680 a year, which is less than the Superintendent's salary. (See Plaintiff's Motion For Preliminary Injunction Restoring Plaintiff Robbin Jackson to Full Time Employment, Exhibit #28. Record Vol. 11.).

The Plaintiff belongs to a racial minority group, and was qualified for several jobs for which the employer was seeking applicants; and, that, despite his qualifications, he was rejected; and, that after his rejection, the position remained open and the employer continued to seek applicants from persons of complaint's qualifications. (McDonnell Douglas, 1973)

The interviewing committees at the Perry Middle School were bias. As the Court could see, an individual could say the same thing and receive different scores from both extremes. The Board keeps saying that there were instructional coordinators on those committees. There was only one instructional coordinator,Gay Nelson, a white female, whom the Plaintiff had a disagreement about another situation before any of the interviews occurred. She was determined not to hire the Plaintiff at any cost.

Two of the interviews at the Perry Middle School, one for the special education and the other for the journalism position, was filled before the Plaintiff had an interview. That is while the principal, Mr. Bobby Pennington did not want me to attend the meeting inwhich he said the Plaintiff was confrontational. The Plaintiff was not confrontational, nor did he attend the meeting. The interviews were only "going through the motions" because the committees that were doing the interviewings had no intentions of hiring the Plaintiff. The interview for the science teaching position, one of the interviewer wrote "Hire" on Cedric Rumph's interview sheet before the Plaintiff was even interviewed.

The Plaintfill did have a physical altercation with a student. The Plaintiff was only trying to defend himself. (See Plaintiff's Motion for Preliminary Injunction Restoring Plaintiff Robbin Jackson to Full Time Employment. Vol. 11, Exhibit #11). However, the Plaintiff was written up. This is like having the coach that was shot in the Columbine High School in Denver, getting written up for being shot by a student.

The Board claims of improper denial of bathroom privileges to students by the Plaintiff is not true. This was explain to the lower courts in earlier documents. (*Id.* Vol. 11, Exhibit #12 page 4).

In the Plaintiff's deposition concerning the working conditions at the Perry Middle School, the Plaintiff was the full-time substitute teacher that did not take a day off, whether it was cold or hot, raining or sunshine, the Plaintiff was there making little money. However; when it rains, many of the eight grade teachers stayed home. The eight grade classes were in portable building. Many of the building did not have a shelter over the door, and large sum of water accumulated in from of the building when it rains for a long time. Certainly the rain would effect all Board employees, regardless of race or gender. However, most of them stayed home, while the Plaintiff had no choice but to go in the rain to substitute for the teacher that decided to stay home.

If the Board wins this case, they can do anything illegal concerning hiring and firing to any employee without being punished for-evermore.

In Conclusion

For the above and foregoing reasons, the petition for a Writ of Certiorari should be granted.

This 23rd day of July, 1999

Robbin Jackson

Mr. Robbin Jackson,
Pro se

1102 Lovely Lane
Perry, Georgia 31069
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So to and subscribed before me
this 23 day of July 1999.

Notary Public

Notary Public Houston County Georgia
My Commission Expires April 28 2003